Correspondence
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Public Comments
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Comments on March 21, 2013 PC Agenda Items

The following comments on items on the March 21, 2013 Newport Beach Planning Commission agenda are submitted by: Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229)

Item No. 1 Minutes Of March 7, 2012

The following minor corrections are suggested:

Page 1

- paragraph 2 under Public Comments: *"He addressed the large volume of documentation and the relatively small amount of time allowed for review and* ~~***discussions***~~ ***discussion at the City Council meeting***." [Without this change, the draft language makes it sound like I was criticizing the thoroughness of the review of Uptown Newport by the PC. My remarks were intended solely to alert the PC to the very limited amount of subsequent attention the matter received before the City Council.]

Page 2:

- paragraph 2: *"Regarding* ~~***mobility, infrastructure and traffic management (N24)***~~ ***Mobility Infrastructure And Traffic Management (Implementation Program 16)****, ..."* [Chair Toerge was referring to a heading on page 13-20 of the General Plan, reproduced on handwritten page 24 of the staff report. In that heading, "MOBILITY INFRASTRUCTURE" is one word. I'm not sure what "N24" was intended to mean.]
- paragraph 12: *"Chair Toerge inquired regarding the location of the ten two-unit and* ~~***eighty-nine unit***~~ ***sixty-nine single family*** *projects."* [This was a reference to the last line of the table on page 2 of the Housing Element report ("Building Activity Report," handwritten page 72). 89 is the total number of units built.]
- paragraph 13: *"Commissioner* ~~***Kramer's***~~ ***Kramer*** *inquired regarding …."*

Page 3

- paragraph 7: *"… including public utilities and the purchase* ~~***or***~~ ***of*** *credits from other cities and Program 20.3 regarding the San Miguel* ~~***Street***~~ ***Drive*** *Bridge."* [although I said "Street" the correct designation is "Drive," unless one wants to think of it as a "Street Bridge"]

Item No. 2 Breakers Drive Lot Line Adjustment/Variance (PA2012-173)

I have trouble understanding what benefit the approval of this adjustment will provide to the owner of 3130/3140 Breakers Drive, Margaret J.F. Parrott, whose 2011 construction project brought the problem to light, but was not in any way responsible for it. The lot line adjustment will not only cause her to lose valuable property, but her new home, which at present is apparently only very slightly out of compliance with the 4 foot side setback requirement of the Zoning Code (3.88 feet at the closest point per Figure 2 in the staff report) will become substantially more out of compliance (3.10 feet after adjustment), requiring a variance which she would not otherwise need.

Is she being financially compensated for the impairments to her property?

I also have trouble understanding why this is an issue here when, according to Zoning Administrator hearings I've attended there are whole blocks on the bluffs above in Corona del Mar where the building pads are much more seriously out of sync with the official lot lines.

As to the issues before the Commission, as explained in a footnote on page 6 of the staff report, the Zoning Code contains a clear definition of "lot width" (a line is drawn from the midpoint of the front lot line to the midpoint of the rear lot line, then from the midpoint of that line, a line is extended perpendicularly to the side lot lines and the width is the length of that line). The widths of the lots, and their compliance or non-compliance with the Zoning Code, would seem to be a key issue here, yet I was unable to find in the staff report any clear statement of what the "official" lot widths would be, either before or after the adjustment. What I found instead was "widths" measured in some fashion at the front and rear of the property ("northerly width" and "southerly width"). I am uncertain how those are defined, and what relevance they have.

Regarding the Draft Resolution of Approval:

On page 1, since lot line adjustments are normally heard by the Zoning Administrator, and this matter was not, the "*Statement of Facts*" should include a statement that the Zoning Administrator chose to refer this matter to the Planning Commission for original determination pursuant to Newport Beach Municipal Code subsection (NMBC) 19.76.020.F. If she did not, the matter is not properly before the Commission.

Since the staff report does not reveal the lot widths, it is difficult to tell if Fact C.1 on page 3 of 9 is correct or not. It would be helpful to state what the lot widths and areas are.

The statement in Section 4.2 ("*Decision*" page 7 of 9) that "*This action shall become final and effective fourteen days after the adoption of this Resolution*" appears to be only partially true. NMBC 19.76.020.L suggests that the lot line adjustment portion of the decision, if not appealed, will become effective 10 days after the decision.

On page 9 of 9, Conditions of Approval 9 and 10 use the word "should" implying that the processing and recording of deeds is recommended, but not required. I believe the word should be "shall" since NMBC 19.76.020.L says the processing and recording are required for the adjustment to become effective. That is in turn echoing California Government Code section 66412(d), which says: "*The lot line adjustment **shall** be reflected in a deed, which **shall** be recorded.*" (emphasis added)

Finally, the conditions of approval should remind the property owners that a Coastal Development Permit (CDP) will also be required for the action to be effective. I base this statement on the recent

California Supreme Court decision in *Pacific Palisades Bowl Mobile Estates, LLC v_ City of Los Angeles*, 55 Cal.4th 783 (2012). The Court held that the requirement for CDP's should be interpreted expansively to include any land use decision governed by the Subdivision Map Act (SMA) ***or*** involving changes in density or intensity of use. Although Government Code section 66412 excludes lot line adjustment between four or fewer adjoining parcels from the purview of the SMA, this particular lot line adjustment, unlike most, involves changes to the net areas of the affected properties, and, however small those changes may be, results in what under an expansive interpretation would be regarded as changes in density. As indicated in the decision, this is not intended to be a burdensome obligation, for although the need for CDP review is triggered by Public Resources Code section 30106, the Coastal Commission's Executive Director would likely find no Coastal Act issues in this particular action and issue a waiver subject to public notice and hearing.

Item No. 3 Mixed-Use Code Amendment (PA2013-020)

The staff report posted to the Planning Commission website is so confusing I find it difficult to comment on it in an understandable way.

The confusion starts with the use in the staff report of such expressions as "minimum lot area/density." That immediately clashes with my belief that changes in lot area and density (dwelling units per acre) are inverse to one another: that is, *minimum* lot area is *maximum* density, and vice versa.

The confusion is exacerbated by Table 1 (on page 2) in which the figures labeled "*Min Lot Area (sf) Required Per Unit*" and "*Max Lot Area (sf) Required Per Unit*" are listed in columns with "min" values larger than "max", and as it turns out these are neither required or allowed lot areas, but rather just somewhat arbitrary numbers used to compute the allowable range of residential units by dividing them into the actual lot area.

The confusion continues into the title of the Draft Resolution, which announces a desire "*TO MODIFY THE MINIMUM LOT AREA/DENSITY STANDARD*" for various Zoning Districts: again, it is either a minimum *lot area* standard or minimum *density* standard, not both.

Beyond that, I remain vague as to what our current requirements are, and what we are trying to accomplish here. As explained to the City Council on February 12, 2013, when the present amendment was initiated, the problem being addressed is the present requirement to provide the minimum required number of residential units on a lot of a given size in addition to providing the minimum amount of non-residential floor area – often a problem, it is said, because not enough off-street parking could be provided for both.

It has taken me some time puzzling over the existing Tables 2-10 and Table 2-11 in the Zoning Code to understand that where say the "Density" on lots in the listed mixed use zoning districts must be in the "*Minimum/maximum allowable density range for residential uses,*" that range is to determined based on the formulas provided in the following lines. For example, the minimum allowable 2,500 square foot lot in the MU-V district is required to have a residential density between 2500/1631 = 1.53 units and 2500/2167 = 1.15 units. But since 1 unit would be too few and 2 units too many, I'm not sure how this standard was supposed to be applied. So I don't know what the current rule is.

But even if I understood how that question was supposed to be resolved, based on what was told to Council, the problem is with the 2167 number yielding too large a minimum number of units; yet the staff report affixes a footnote (mislabeled "6") to the 1631 number, as if it were the problem (which I don't think it is).

With reference to Exhibit A of the draft resolution, it makes clear to me why the pre-Measure EE City Charter required the Municipal Code to be amended an entire section at a time, rather than in pieces of sections taken out of context, as is being attempted here, including even snippets of tables where we see footnotes without seeing the parts of the table they refer to.

Had we used the old system we would have noticed that the existing Section 20.22.030 ("Mixed-Use Zoning Districts General Development Standards") appears to contain an additional error that should be corrected with this amendment: it contains two tables, only one of which is called out in the text (although both are called out in numerous other sections of the Zoning Code). Equally importantly, it

would have become apparent that the tables are mis-numbered in the proposed amendment. Their existing numbering is Table 2-10 and Table 2-11. Because of the numerous references to them under that numbering, and because there is an existing Table 2-12 serving another purpose, changing the numbering of these to Table 2-11 and Table 2-12, as is proposed in Exhibit A, would cause immense confusion.

Not only are the Table numbers mixed up, but so are the footnotes. The existing Table 2-10 (here mis-numbered 2-11), has only 4 notes, not the 5 shown in Exhibit A, explaining why note "(4)" in the first table in Exhibit A seems more relevant to computation of allowable units than does "(3)" (which refers only to the MU-W1 Zoning District, and belongs only in the second table).

In addition, it is difficult to see why one would want to change the subtitle of "Table 2-11" (formerly Table 2-10) to "DEVELOPMENT STANDARDS FOR **VERIDICAL** AND HORIZONTAL MIXED-USE ZONING DISTRICTS." The former word "**VERITICAL**" seems preferable to me.

Beyond that, as explained above, I am not sure why the proposed new footnote has been affixed to the number 1,631 in the body of the table. Why not simply expand the existing footnote associated with the word "Density" to read: *"(3) For the purpose of determining the allowable number of units, portions of legal lots that are submerged lands or tidelands are included in land area of the lot. For the MU-V and MU-CV/15th St. Districts, the minimum density may be modified or waived through the approval of a site development review*." [Note: in the existing Table 2-11 this would be note "4" (with suitable modification to the Districts called out). In addition, the existing Table 2-11 has a solid horizontal line separating "*Density (4)"* from "*Lot area required per unit."* As in existing Table 2-10, that should read "*Lot area required per unit (sq. ft.),"* the dividing line should be erased and the note should come at the end of the elongated vertical cell, making it clear the adjoining rows to the right are to be read together.]

Finally, in Table 2-10 (mis-numbered 2-11), the formula for computing the allowable residential density range in the MU-MM Zoning District is said to apply "*For property beginning 100 ft. north of Coast Hwy*." This begs the question of whether there are any properties zoned MU-MM that *do not* begin 100 ft. north of Coast Hwy, and if so, what the formula for them is?

And in Table 2-11 (mis-numbered 2-12), under the MU-W1 District, no maximum square foot number is provided, so there is no way to compute the minimum number of residential units required.

Beyond all this, even with the post-Measure EE rules, I believe the proposed code amendment violates City Charter Section 418 "*Ordinances. Amendment. The amendment of any section(s) or subsection(s) of an ordinance may be accomplished by the subsequent adoption of an ordinance which specifically modifies the section(s) or subsection(s). (As amended effective January 9, 2013)"* It formerly required amendment "*by section or sections at length.*" Although the words "at length" no longer appear, I believe the intent was to allow amendment of subsections (at length) of a section, not individual words or sentences within a subsection. If any sized piece of a previous ordinance could be modified, it would have been superfluous to refer to "*section(s) or subsection(s)*."NMBC 20.22.030 contains no numbered subsections, so I believe the proposed ordinance needs to amend it at length, not just isolated sentences and fragments of tables. As it is, it is impossible for the public to guess what the codifiers interpretation of the Planning Commission/Council's intent may be. For example, if a part of the table is omitted, is it the intent to remove it?